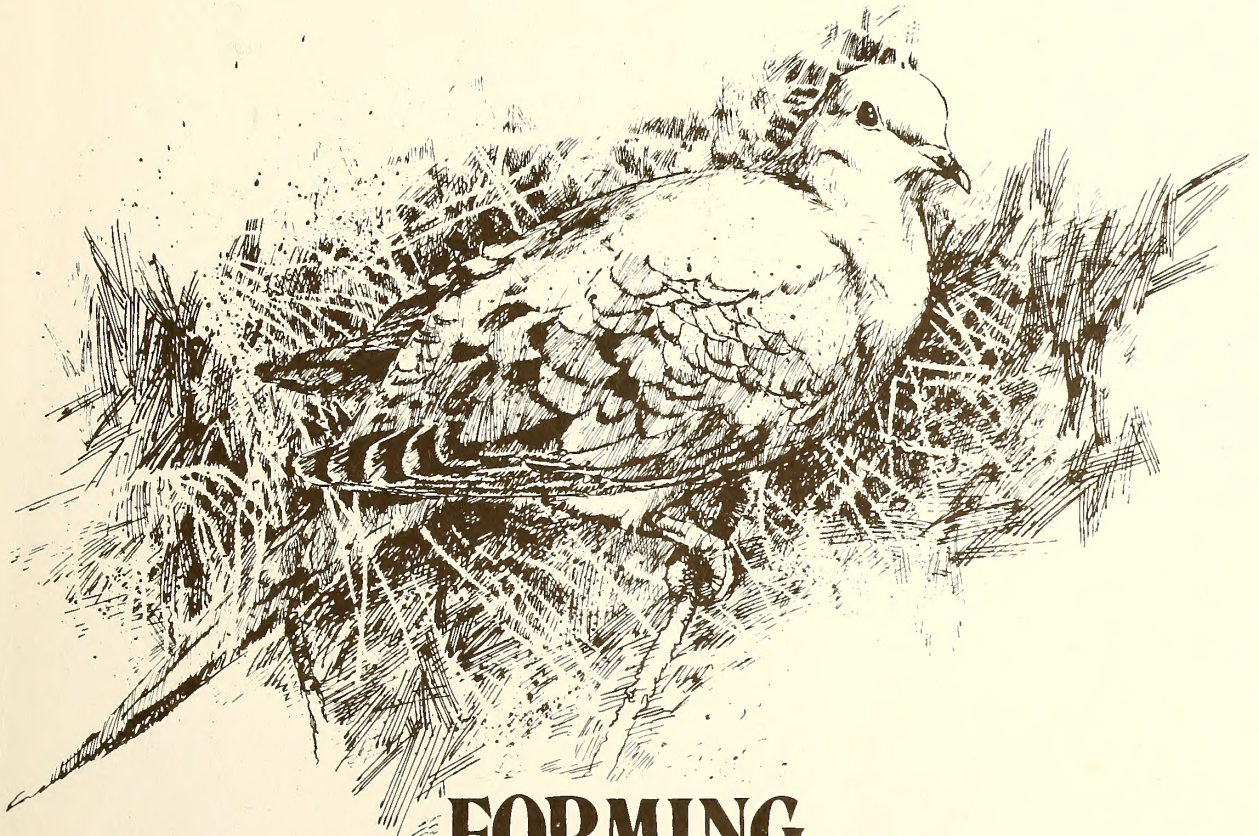


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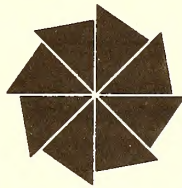


**FORMING
A CONSERVATION FOUNDATION
IN NORTH CAROLINA**

FORMING A CONSERVATION FOUNDATION
IN NORTH CAROLINA

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FORMING A CONSERVATION FOUNDATION

I. Introduction -- What Is a Conservation Foundation?

North Carolinians, alarmed by the rapid destruction of natural lands throughout the State, can act to protect their natural environment by forming a conservation foundation. The preservation of North Carolina's natural heritage will not be achieved by government actions alone. Landowners and local citizens will shape the future of the land. This guidebook serves as a guide for any person or group interested in establishing a conservation foundation.

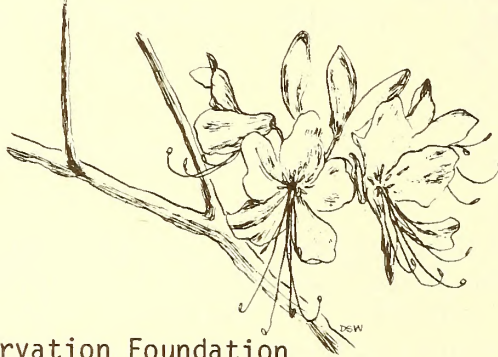
A conservation foundation -- in some states called a land trust -- is an organization created by people to help save land. A conservation foundation is a private, nonprofit, charitable (and tax exempt) corporation created to acquire and manage lands in the public interest. A conservation foundation created by a few dedicated people, perhaps to save a single precious piece of land, can evolve into the means by which an entire community works to preserve its heritage of land.

A conservation foundation is created on the belief that quality of life depends on the care and protection of the hills and woodlands, mountains, marshes, watersheds, and natural lands -- and the communities of wildlife and plant life these lands support. These values will be lost unless conservation action is taken. The need to retain natural lands must be anticipated and provided for in advance. Land acquired by a conservation foundation will be retained in its natural condition in perpetuity for the benefit of all -- making conservation of wildlife, beauty, and natural resources practical and profitable for donors, and economically attractive to all the people.

Concern for retaining natural lands is growing among the people of North Carolina. Many people are receptive to donating property and funds for protecting natural habitats. Unfortunately, State and local government agencies are frequently unable to respond to conservation opportunities. Public funds may be unavailable for acquisition and management of natural lands. Government agencies may not be able to move swiftly enough to comply with a seller's needs or may be reluctant to accept a donor's wishes.

Citizens in many states have created foundations as land conservancies to protect important natural resources in and around their local communities. Conservation foundations are particularly strong in New England where they function in most counties and towns. Only

a few conservation foundations exist in North Carolina. As a consequence, many opportunities to preserve precious natural lands are being lost. Concerned citizens in North Carolina can organize and commit themselves to preserve their natural heritage by forming conservation foundations.



II. Advantages of a Conservation Foundation

Conservation foundations provide alternatives to government acquisition. A citizen's organization has the flexibility and interest that government agencies may lack. A foundation can act quickly and apply a number of acquisition techniques available only to nonprofit organizations.

A willing donor can avoid the obstacles of bureaucratic red tape or other negative aspects of working with a government agency, by instead dealing with a private conservation foundation. Many people do not trust government at any level. Foundations, however, are composed of fellow citizens and negotiate on a citizen-to-citizen basis.

A conservation foundation may take a specific geographical interest. It may focus on a particular town, watershed, county, or region. The foundation is organized and operated for the benefit of the general public. Its purpose can be to preserve natural lands and habitats, to establish parks and refuges, or to provide for community recreational and open-space needs.

A. Flexibility and Specific Scope of Interest

A foundation, as a private organization, can act without the political impediments which often limit the effectiveness of government agencies. A foundation has discretionary abilities that permit it to experiment and capture new opportunities before they vanish.

A private organization can act at the most advantageous time for the landowner, whereas land acquisition by public agencies is an unpredictable and lengthy process. A conservation foundation can move quickly when property goes on the market. Suppose a town has long waited to acquire a choice natural area. Before it can act, the town may have to cut through red tape, secure funding and vote on

the purchase. This process is time-consuming. The property owner may not want to wait while the public agency decides whether to buy or not. The conservation foundation, however, can take an option on the property immediately and hold it until the public agency is able to act.

There are several reasons why donors may prefer to give land or easements to a conservation foundation rather than to a town, county or state agency. The government agency may not accept their gift. Also, some donors, justifiably or not, fear that the government agency may someday misuse the land in ways unintended by the donor. When a public agency acquires land, it usually wants no strings attached. But when the land gift is made to a foundation, the donor's restrictions on use or development are assured.

The flexibility of a conservation foundation allows it to accept land deeds too encumbered to interest government agencies, or land parcels too inaccessible or odd-shaped or small to justify public ownership and management. Legal safeguards unacceptable to government agencies may be perfectly acceptable to a conservation foundation.

A conservation foundation can work out flexible arrangements with landowners and donors, negotiating in a spirit of "What can we do for you?" Government negotiators are likely to be all too conscious of what the donor should do for the public, an attitude which can discourage, or even enrage, a potential philanthropist. Often landowners would prefer to deal with a private organization which can provide confidentiality or, when desired, publicity.

A public agency may only be able to visualize public uses in the here and now. Shortsighted government administrators shy away from accepting what they consider "little bits and pieces of land." Yet there are people in every community who would like to dedicate all or a portion of their property to natural space. When there is little interest among government in receiving land gifts, a conservation foundation will see the immense value in preservation.

Conservation foundations can operate outside the uncertain realm of politics. The foundation can be more concerned than a government agency in safeguarding the natural values of the land and desires of the donor. The conservation foundation serves as a "watchdog" removed from the influences of politics.

Thus, for many reasons donors may feel more comfortable in giving their land or easements to a conservation foundation, composed of friends and citizens, than to a government agency.

B. Permanent Control of the Land

Often public ownership is the best solution to a land use problem. Marshlands, for instance, are heavily restricted against development,

and private owners are often frustrated by their inability to develop them. Public ownership of these wetlands -- by conservation foundations or government agencies -- would resolve much of the conflict over development and non-use. By committing certain lands to their natural values, an owner can also be compensated by purchase of development rights, trades for developable sites elsewhere or tax credits.

Conservation foundations are an excellent vehicle for land stewardship. Stewardship is shared ownership of land for the public benefit -- educational, cultural, scientific and recreational. Land ownership by a foundation can serve as an effective method of guaranteeing that community goals for land can be achieved. An example of such citizen action is the Jockey's Ridge project in Dare County. The citizens initiative in the "People to Preserve Jockey's Ridge" resulted in the purchase of the natural landmark and creation of a state park.

C. Benefits to Public Agencies

Acquisition of natural lands by foundations can especially benefit the interests of government agencies. We have already noted that foundations can acquire and hold lands until government agencies are able to receive them for conservation purposes. Frequently the foundation acts as an honest middleman to assist public agencies acquire land by gift or below-market-price, and to discreetly help the property owner work out the best possible arrangements.

A foundation can initiate the acquisition of land and later pass along the property, with a "reverter clause," to a public agency. In this approach, the donor can give land to the foundation with certain stipulations on the uses. Then, when the foundation passes along the land to a government agency, the restrictions ride with the deed. If those who receive the land violate any of the restrictions, the property reverts to the foundation or donor.

Private foundations have shown that they can work very effectively with government agencies. In some cases, they have been the spark that stimulated elected officials to get on with a much needed job of preservation or control. The Northwest Environmental Preservation Association, for example, has brought about several acquisitions that have resulted in the establishment of several North Carolina state parks.

In other states, conservation foundations have been responsible for protecting natural lands along wild and scenic rivers, such as the Brandywine River in Pennsylvania and Delaware and the Nissitissit River in Massachusetts and New Hampshire.

Foundations can complement the work of local conservation commissions, soil and water districts and other agencies involved in land use. The conservation foundation can reinforce a community's planning and zoning regulations or fill a void where these regulations are

inadequate by acquiring land. Some community subdivision ordinances require developers to donate a portion of land to conservation use. Who then will accept and manage this public land? Foundations can work out arrangements with developers to preserve critical natural areas, either by outright gift or through an easement. Foundations also work with planning, zoning, and conservation commissions and with local government to implement new and innovative methods for protecting the landscape. A community can increase its ability to cope with open space and natural resource needs by coupling with the private capital and acquisition techniques available to a foundation.

D. Financial Benefits to Landowners and the Public

Donors of land or money minimize their property taxes and reduce their income and inheritance taxes, while making valuable contributions to their community. Because of its charitable, tax-exempt status, a conservation foundation is able to offer maximum tax benefits to donors or below-market-price sellers.

Generally a conservation foundation is supported by donations, grants, active fund raising, membership fees, and gifts of land, securities, endowments and specific bequests. Once established as a publicly-supported charitable organization, it should receive tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Donations made to a publicly-supported tax-exempt organization are fully deductible by the donor from his taxable income as charitable contributions under Section 701 of the Internal Revenue Code. A foundation, of course, can use this tax-exempt status to attract donations and to help a property owner or other donors work out the best possible financial arrangement.

Landowners find considerable advantages to be derived from donations (or below-market-price sales) to conservation foundations:

1. Frequently the giving away of land nets the owner's estate greater solvency. (Income and inheritance tax laws actually encourage preservation of natural lands through tax deductible gifts. Under prevailing laws, gifts to a conservation foundation can represent as much as 50 percent deducted from the donor's adjusted gross income).
2. Land is so flexible as a direct philanthropic device that its simple conversion to cash can destroy not only the landscape itself, but lose the owner a unique opportunity in estate planning. (A land holder and his heirs can achieve long-term advantages for themselves through certain actions of enlightened self-interest).

3. There are compelling arguments why certain landowners should consider donation of their property for public-interest natural land. It should come as no surprise that almost all the compelling arguments revolve around one thing: taxes. (A conservation foundation makes conservation both practical and efficient through proper application of existing tax laws).
4. Even among speculators, both professional and amateur, there are many with vision who would like to see the land used properly as well as profitably. (Even land which is now being held for development may be enhanced in value and total usefulness through judicious gifts of certain parcels).

Everyone else benefits too. Permanent natural land in any form -- park, nature sanctuary or buffer strip -- adds value to nearby private property. Permanent natural land adds to the quality of life for us and for future generations. These property and quality-of-life values add net worth to the entire community. Natural lands cost taxpayers less than lands devoted to housing. Experience has repeatedly proven that the services required by new housing developments are more costly than the income derived from property taxes on those developments. Land set aside for permanent open space has a restraining influence on your future tax rate.

E. Why Not Rely on Existing Conservation Organizations?

Local conservation foundations are not established to compete with groups such as The Nature Conservancy. Local or regional conservation foundations assist the national and State conservation organizations by giving donors the option of keeping their gift in local hands. Many landowners are sentimental about their communities and would like to see their land and money donations go to local persons known to them.

No national organization has unlimited ability to acquire and manage every piece of land deserving protection. National groups like The Nature Conservancy, National Audubon Society or National Wildlife Federation generally focus their interests on natural areas of national or statewide significance. The assistance of capable local organizations is essential to conservation of our natural heritage.

Statewide conservation organizations are, in fact, quite active in receiving gifts of land or easements. Among them are the Botanical Garden Foundation and Conservation Foundation of North Carolina. Again, however, there are simply too many pieces of precious land and too many potential donors for a few organizations to cope with. Add this problem to the limited staffs and finances of these private statewide groups and it becomes clear that conservation foundations operating on a relatively local level can provide a genuine service in supplementing the ongoing conservation efforts of others.

F. Conservation Foundation in Summary

I. What is a Conservation Foundation?

- A. A way for local citizens to shape the future of natural land.
- B. A community organization which preserves land for open space, parks, refuges, agriculture or other public uses.
- C. A means of increasing public concern for natural land.
- D. An organization which can influence government land use policy.
- E. A nonprofit tax exempt corporation operated by local citizens.

II. What Benefits Can a Conservation Foundation Offer?

- A. To the community:
 - 1. Increased awareness of an essential natural resource-- land.
 - 2. Perpetual control, ownership and management of land.
 - 3. An alternative to conventional government acquisition efforts.
- B. To private landowners:
 - 1. An organization which will safeguard the future of land.
 - 2. Personal contact, flexibility and confidentiality when arranging the terms of a land transaction.
 - 3. The ability to accept conservation easements which allow for private ownership while restricting future land use.
 - 4. Tax benefits to individual or corporate owners who donate land, cash or materials to the foundation.
- C. To government agencies:
 - 1. Acquisition of land earmarked for government purchase until public funds become available.
 - 2. Sale of land to government agencies at prices below fair market value.
 - 3. Management of government owned land; leasing of land to government agencies.

G. National and State Organizations--Other than Government Agencies--
that can Protect Natural Areas Include:

The Nature Conservancy

Box 805
Chapel Hill, North Carolina
27514

or
1800 N. Kent Street
Arlington, Virginia 22209

The Nature Conservancy, with its North Carolina branch, is a national nonprofit organization that has helped preserve nearly 1.5 million acres in the United States-- including over 100,000 acres of significant natural land in North Carolina. TNC is dedicated to conservation through private action. In some situations, TNC sponsors local project committees to help acquire and manage natural areas.

National Audubon Society

Southeast Regional Office
Post Office Box 1268
Charleston, South Carolina
29402

or
950 Third Avenue
New York, New York 10022

National Audubon Society and its seven North Carolina local chapters are capable of acquiring and managing wildlife sanctuaries. NAS now owns one large preserve on the North Carolina coast; and one of its local chapters administers a community natural area. Audubon's goals are to protect wildlife resources, provide environmental education and improve our natural environment.

National Wildlife Federation

1412 Sixteenth Street, N.W.
Washington, D.C. 20036

National Wildlife Federation is a national organization of wildlife conservationists that promotes wildlife and habitat protection and conservation education. Its "Common Heritage Program" receives funds and holds land for wildlife refuges. NWF provides information to private landowners for habitat management.

Trust for Public Land

Southeast Regional Office
1300 Executive Center Drive
Suite 308
Tallahassee, Florida 32301

or
82 Second Street
San Francisco, California
94105

This national nonprofit organization specializes in acquiring and preserving open space lands on behalf of the public. TPL has helped establish several local land trusts in other States, including urban land trusts. One of TPL's goals is to create new attitudes towards land and its responsible use.

North Carolina Botanical Garden
Foundation

c/o North Carolina Botanical
Garden
100 Totten Center
Laurel Hill Road
Chapel Hill, North Carolina
27514

This foundation is the support organization for the North Carolina Botanical Garden and is empowered to acquire and hold unique natural lands. The foundation focuses its preservation efforts on unique natural areas--rare and unusual plant species and threatened habitats. It has acquired several important botanical areas throughout the State.

Conservation Foundation of
North Carolina

c/o CCNC
307 Granville Road
Chapel Hill, North Carolina
27514

This nonprofit foundation wing of the Conservation Council of North Carolina can receive land. It is acquiring the MacLamrock historic and recreational area in Rockingham County. The CF and CCNC are engaged in a wide variety of conservation interests.

North Carolina Land Trustees of
America, Incorporated

Turkey Farm Road, Route 2
Chapel Hill, North Carolina
27514

The North Carolina Land Trustees is a nonprofit corporation seeking to conserve valuable land. It offers to dedicate rural and urban properties to innovative uses by conscientious trustee residents. NCLT encourages land stewards to develop land in ways that emphasize self-reliance and conservation.

Northwest Environmental Preser-
vation Committee, Incorporated

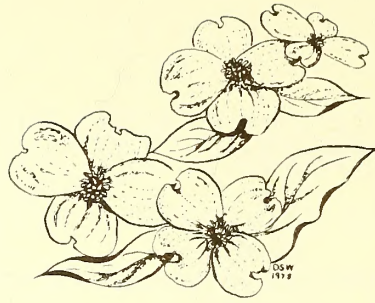
Box 575
Winston-Salem,
North Carolina 27102

The Northwest Environmental Preservation Committee is a regional, multi-county conservation foundation which has participated in the establishment of nearly 20 State, county and municipal parks.

Association for the Preservation
of the Eno River Valley

4015 Cole Mill Road
Durham, North Carolina
27705

The Eno River association exemplifies what a local conservation organization can accomplish. Its determination has resulted in the creation of a river corridor State park and greater appreciation by metropolitan residents for their natural environment. The association is a local project committee of the Nature Conservancy.



III. Starting a Conservation Foundation

You can start a local conservation foundation. North Carolina has laws which permit private groups to organize nonprofit corporations. A foundation is created by forming a nonprofit corporation and then applying to the Internal Revenue Service for tax-exempt status. With this guidebook and the advice of a competent legal attorney, a conservation foundation can be structured to meet the requirements of the State's corporation code and requirements of the State and Internal Revenue Service for tax-exempt status.

Since tax-exempt status is essential to the conservation foundation's ability to attract donations, all the necessary steps in setting up the foundation should be undertaken so as to be certain of getting that exemption. Nonprofit status under applicable State law does not alone confer tax exemption. To achieve tax-exempt status, the corporation must convince the Internal Revenue Service (IRS) that it has been organized and will be operated exclusively for one or more of the tax-exempt purposes defined in the Internal Revenue Code. In making their determination the IRS will rely heavily upon what the corporation has defined as its purposes and powers in its articles of incorporation. It is, therefore, important that the articles of incorporation be carefully prepared. The IRS's publication 557, "How to Apply for and Retain Exempt Status for Your Organization", should be obtained and read carefully before preparation of the articles is undertaken.

A. Purpose of the Corporation.

The incorporators' first step is to decide precisely what the purposes of the corporation are to be. It is critical that members of the founding group agree among themselves WHY the foundation is being formed. Being a nonprofit corporation operating in the public interest, a clear and specific statement of purpose is necessary. This will prevent later misunderstandings and create principles on which to base decisions and is necessary to attract others to the organization. So the first step should result in a piece of paper that specifically states the purpose of the proposed foundation.

B. The Board of Directors.

Recruiting 10 to 15 reliable members of the board of directors or trustees represents a top priority to the success of a foundation. While some of those members become active daily in the operations

of the foundation, it is desirable to choose other well-known, yet less active citizens, who can lend credibility to foundation activities. Additionally it is wise to select a variety of people who possess a real commitment to the mission of the foundation.

These Board members could be bankers, local newspaper editors, real estate specialists, religious leaders, business people and conservationists. Active Board members are essential particularly when the foundation does not have a staff. The names of all Board members should appear, for public relation purposes, on any printed material or stationery used by the foundation. It is also desirable to include a resident lawyer on the Board who would be willing to donate services, or to enlist a local attorney who would be willing to perform services at no cost, even though not a Board member. A lawyer will be invaluable in the formation of your corporate charter, preparation of by-laws, explanation of tax and property considerations and other legal matters.

C. Building Membership.

Recruiting a broad-based membership is the next important task. Letters may be mailed to anyone who may be interested in the project, explaining the purpose of the foundation, the tax advantages involved and the benefits accruing to the community as a result of protecting natural lands. Call a meeting, inviting citizens of all persuasions to attend. Every effort should be made to include as many interests as possible. In the case of a foundation that concerns itself with a particular geographic area, such as a watershed, be sure to urge the landowners with the most immediate stake in your organization's activities to attend the meetings.

An agenda for your first organizational meetings is suggested in appendix B.

D. Choosing a Name.

Initially, the name of the foundation must be chosen. The name must not be one which is already in use nor one which will confuse the public. A check of name availability may be executed by contacting the Secretary of State, Corporations Division, 116 West Jones Street, Raleigh, North Carolina 27611 (919/733-4201). After checking upon the availability of a name, a name reservation form should be sent to the Secretary of State, accompanied by a \$5 reservation fee. A name may be reserved up to two 90 day periods. Following this procedure, the articles of incorporation are ready to be adopted.

E. State Incorporation Requirements.

State law determines how a nonprofit corporation may be created. These laws (G.S. 55A-1 through 14) require the filing of articles of incorporation and organizational by-laws. (See appendix C and D for model articles of incorporation and by-laws.)

The following outline describes the process for preparing articles of incorporation and by-laws and for seeking a tax-exempt status in North Carolina.

1. Determine whether purposes and activities satisfy requirements for Federal tax-exempt status. Section 501 (c)(3) of the Internal Revenue Code of 1954 sets up the guidelines for this action.
2. Form (incorporate) a tax-exempt foundation as a nonprofit corporation.
 - a. Select name for foundation
 - b. Draft Articles of Incorporation and By-laws
 - c. Draft exemption from State income tax
 - d. Hold first meeting of Board for by-laws adoption; officer selection
3. Complete and file application for Federal tax exemption (form 1023).
4. Apply for State income tax exemption

Chapter 55A of the General Statutes of North Carolina are pertinent to nonprofit corporations. Several salient sections are worth consideration. Any number of natural persons, aged 18 or more, may act as incorporators of a corporation. These persons need not be residents of the State (§55A-6). The statutes explain the various subjects which shall be covered in the articles of incorporation (§55A-7). The general powers of nonprofit corporations are listed plainly; these powers include the right to sue and be sued and to make and alter by-laws (§55A-15).

F. Preparing the Articles of Incorporation

The articles of incorporation must include each item listed in the statute (N.C. G.S. 55A-7). Among these items are:

1. The name of the foundation
2. The period of duration of the foundation; it is best to indicate a "perpetual" existence.
3. An indication of the purposes of the foundation should include a broad mandate of responsibilities. It would be helpful to include the phrases "...including the transaction of any or all lawful business for which a corporation may be incorporated under the laws of North Carolina."
4. An indication of the class or classes of members.

5. The manner in which directors of the corporation are to be elected--any number of people 18 or more years age may constitute the board of directors.
6. The name and address of the initial registered corporation. This may be the address of the private citizen who is actively forming the foundation.
7. The number of directors constituting the initial board and the name and address of these directors. The number shall number no fewer than three.
8. The names and addresses of all the incorporators.
9. Power and authority additional to those granted corporations under the laws of North Carolina.
10. Any other provision, consistent with the law, that the incorporators may elect to set forth. This provision allows for the drafter's imagination to be creative.
11. The article shall be signed by the president or vice president and by the secretary or vice-secretary with or without the corporate seal.

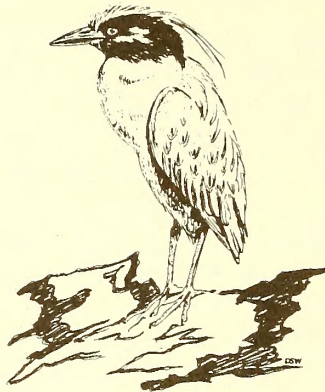
At last the Articles of Incorporation are complete and ready to be submitted to the Secretary of State, Corporations Division, accompanied by a \$20 tax and fee. The original and a conformed copy should be submitted. After the Secretary of State endorses the articles, a certified copy is returned to the foundation. A copy of the articles shall then be promptly delivered to the register of deeds of the county, wherein the corporation has its registered office. After recordation the foundation may conduct operations.

N.C.G.S. 55A-16 specifically empowers corporations to create and maintain public parks (a term including recreational facilities and centers). Such corporations, formed for the purpose of creating public parks, have power to purchase and hold property and to take gifts or donations for that purpose. The corporations may hold parks in trust for any town, city or county. Or the local government may vest and transfer park lands to such corporations.

G. Preparing the By-laws.

By-laws, in contrast to articles of incorporation, are concerned with the day-to-day operation of the foundation. By-laws are adopted by the Board of Directors and can readily be modified by them. It is best to remember that the IRS can revoke a tax exemption if there is substantial change in what the foundation is doing, such as straying into non-tax-exempt activity. Therefore, it is prudent to stay within the purposes and powers set forth in the articles of incorporation.

As a rule, the broader the articles of incorporation and by-laws are, the better off the foundation is. With broad powers, you can always narrow things administratively to a specific purpose. Broad powers also allow you to take advantage of more opportunities. An example of the benefits of flexibility is in the case when a foundation is offered land for acquisition when the land is not appropriate for conservation purposes. This property could still be donated to the foundation, with the donor getting tax benefits. The foundation could then sell this land and buy other land that is more suitable.



IV. Gaining Tax-Exempt Status

Tax-exempt status is crucial to the effectiveness of a conservation foundation. Income tax and estate tax advantages for gifts to your organization offer strong incentives to potential donors of land, easements or money. Your lawyer should immediately apply to the Internal Revenue Service (IRS) for tax-exempt status.

A. Federal Tax Exemption

The key to a tax-exempt status is through compliance with the provisions of IRS Publication No. 557 entitled "How to Apply for and Retain Exempt Status for Your Organization." To qualify for exemption you must be organized for one or more purposes specifically designated in the Code. The appropriate reference chart can be found on page 19 of IRS Publication No. 557. The 1979 edition of this publication is much easier to read and follow than previous editions; it should prove most helpful.

You will be able to tell the section of the IRS code under which your organization qualifies for exemption, the required form for application, the annual return to be filed and whether or not a contribution to such an organization will be deductible by a donor. It also gives a description of the various organizations and the general nature of their activities.

For conservation purposes, line 3 of the reference chart applies. Your organization should apply as a "public foundation" for exemption under IRS Code Section 501(c)(3). IRS Form No. 1023 is used in the application process.

It should be noted that a private foundation cannot be tax-exempt nor will contributions to it be deductible as charitable contributions unless its governing instrument contains special provisions such as set out in Draft "A" on page 31 of IRS Publication No. 557.

Remember--IRS Publication No. 557 contains key phrases that the IRS looks for in the articles of incorporation for grant of tax exemption. Read this publication before the articles of incorporation are drafted. Write the articles with an eye toward approval under the IRS publication to insure a smooth organizational process.

Your exemption will be effective as of the date your foundation was incorporated, but IRS approval may take 2 to 8 months (constant pressure by your lawyer can speed the process). The actual process of qualifying with the IRS as a tax exempt organization can be a cumbersome and lengthy procedure if not done properly. If it is at all possible, a foundation should include an attorney in its membership who is willing to donate the necessary legal service.

Note: A related measure to be taken is the securing of a nonprofit bulk mailing permit from your Postmaster.

Early in the incorporation process, the organizers of a conservation foundation must make the determination as to whether they wish to obtain the status of a "public" or "private" foundation. Usually status as a publicly supported foundation is preferable. Also it is more advantageous for a donor to deal with a public rather than a private foundation. A private foundation is subject to investment taxes and certain prohibited acts. A foundation will be assumed by IRS to be a private foundation, with a few exceptions, unless it notifies IRS that it is a public foundation.

The ability to label a foundation as public is preferred where broad-based funding is essential in order to accomplish sizable land transactions. A broadly-based public foundation is preferable when it comes to forming a charitable foundation necessarily dependent upon public support, as are most conservation foundations.

The Internal Revenue Service has enumerated guidelines which a foundation must follow in order to qualify for and retain its status as a publicly supported organization. The foundation must normally receive a substantial portion of its support from a governmental unit or the general public.

Normally the organization must receive at least one-third of its support from governmental units, contributions directly or indirectly from the general public or combination of these. Organizations must follow these requirements for the present and succeeding tax year if for the 4 preceding years, it met the one-third factor on an aggregate basis.

If an organization fails to meet the one-third test, it still may qualify if it normally receives a substantial part of its support from governmental units, from direct or indirect public contributions or a combination of these two. In order to qualify it must meet a 10 percent requirement and an attraction of public support requirement. The 10 percent requirement involves that a substantial percentage must come from the government, public or a combination of these, i.e., at least 10 percent of the total support normally received by the organization.

The attraction of public support requirement means that the organization must engage in a continuous and bona fide program for the solicitation of funds from the general public, the community or its membership. These activities must also be designed to attract support from governmental units or other charitable organizations. The Internal Revenue Service considers the reasonableness of these solicitations and the fact that initially an organization may pursue seed money to start operations. Solicitations of seed money from a few sources may limit the scope of public support, but is an allowable factor according to IRS Publication 557.

An organization normally will meet the requirements of the 10 percent support limitations for the current tax year and succeeding tax year, if for 4 preceding years it meets the requirements of the 10 percent support and attraction of public support factors, on an aggregate basis, and if it satisfies a sufficient number of the following public support factors:

1. Percentage of financial support -- If this percentage is at least 10 percent but less than one-third total support, consideration to the percentage will be given. As the percentage increases toward one-third support, less of a burden rests on the organization complying with the other four factors. A smaller percentage increases the reliance on these other factors.
2. Sources of support factor -- If support again ranges between 10 and 33 percent, consideration will be given to a representative number of people that contributed funds. In determining the representative number of persons, IRS considers the type of organization, length of existence of the organization, and the limitations of subject matter and physical area covered by the organization.
3. Representative governing body factor -- The governing body should represent broad public interest. The composition should include:
 - a. public officials acting in a public capacity
 - b. individuals selected by public officials in their public capacity
 - c. persons possessing special knowledge or expertise
 - d. community leaders or others representing a broad cross-section of the community.
4. Availability of public facilities or services factor -- Generally the organization should provide facilities or services to the public on a continuing basis. Other factors include:
 - a. participating in or sponsoring programs of the organization by members of the public having special knowledge, public officials or civic leaders;
 - b. maintaining a definitive program to accomplish its charitable work in the community;

- c. receiving a significant part of its funds from a public charity or a governmental agency to which it is held accountable as a condition of a grant, contract or contribution.
5. Additional factors pertinent to membership organizations --
- a. solicitation for dues-paying members is designed to enroll a substantial number of persons in the community or experts in the field;
 - b. membership dues for individual members to be fixed at rates so that membership is available to a broad cross-section of an interested public;
 - c. the activities of the organization appeal to persons have broad common interests or purposes.

If an organization has existed for 1 tax year of at least 8 months, but less than 5 years, the number of years it has been in existence will substitute for the 4-year period mentioned above. Further, if a material change in the sources of support occurs, its period of existence substitutes for the 4-year period.

B. State Tax Exemption

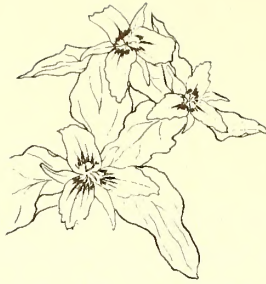
As a nonprofit corporation, a conservation foundation may apply for exemption from the North Carolina State income taxes. An application for exemption should be submitted to the North Carolina Department of Revenue, Corporation Income and Franchise Division, Post Office Box 25000, Raleigh, North Carolina 27640. No specific forms are necessary; however, it is recommended that the foundation charter and by-laws should be submitted. In addition the letters which requested and permitted Federal tax exempt status should accompany the correspondence.

C. Property Tax Exemption

The General Statutes of North Carolina allow for exemption from property taxes on real property owned by a nonprofit organization exclusively held and used by its owner for educational and scientific purposes as a protected natural area. A protected natural area refers to a nature preserve or a park in which all types of "wild nature, flora and fauna and biotic communities are preserved for observation and study" (G.S. 105-275(12)). The State has been given the power to exempt certain properties from taxation by G.S. 105-274(a)(2).

A nonprofit organization holding land or rights in land should request an exemption from the county tax supervisor in which the land is located. An exemption may be granted if the foundation obligates use of the land in compliance with the statute allowing such an exemption. An appeal of the county tax supervisor's determination can be made to the North Carolina Department of Revenue.

V. Fund Raising



Funds should be sought immediately. Cash contributions will build the revolving contingency fund your foundation will need to respond rapidly to acquisition opportunities. Ready cash may be necessary for your initial efforts, such as for legal fees, postage, mimeographing, brochures and the like.

In many cases, the organizers of conservation foundations have made personal contributions (tax deductible) or have been able to solicit contributions from others. In other cases, individuals have loaned money to the conservation foundation during its formative stages with the agreement that the loan will be repaid once formal fund raising has begun.

The next step is the initiation of a membership and fund raising drive. Under terms of your by-laws, the Board of Directors sets the categories of membership (i.e., individual, student, family, charter, etc.) and the annual rates for each category. Membership may begin as low as \$1.00, continue through various categories and finally offer life memberships.

These membership categories should be quickly established and efforts to gain members begun. In order to stimulate interest throughout your area and to make everyone feel that any size donation is cherished, it is important to acquire a broad-based membership. The foundation should immediately acknowledge all donations.

Property or easements usually will be donated to the foundation, but occasionally your foundation must purchase property at full or partial value. Yet most of the monetary contributions received by the foundation are used to pay maintenance expenses, legal fees, property taxes (when appropriate), and appraisal and survey costs. If property taxes have to be paid, they should be minimal because the land has little development value or the land value is severely cut by deed restrictions.

Membership and fund raising drives are efforts unique to each organization, but some basic techniques have proven useful:

- Distribute mailings to persons living in or interested in the area of the foundation's activities; request that they join and contribute.
- Invite those known to be interested in similar projects to join your conservation foundation.
- Approach civic-minded corporations for corporate memberships and donations.
- Get newspaper and radio coverage.
- Recruit support from local groups and organizations in "spreading the word."
- Have individual officers approach selected individuals likely to offer substantial donations.

- Investigate philanthropic charitable foundations and apply for available funds.
- Prepare a descriptive brochure for use as a membership and fund raising aid.
- For foundations based on watersheds, make every possible effort to establish friendly relationships with owners of land adjacent to the river.
- As you begin to acquire land, arrange field trips for prior donors and prospective or supporting members.
- Cultivate a cooperative relationship with local governments; your organization can help a community produce its local share of total cost for a project, thus making the community eligible for a 50 percent matching Federal grant (a Land and Water Conservation Grant for acquisition and/or development of natural lands and water dedicated to public outdoor recreation; these grants are provided by the U.S. Department of the Interior's Heritage Conservation and Recreation Service and are awarded by the North Carolina Department of Natural Resources and Community Development). In certain cases, donations of land can be used as the local share of a project.

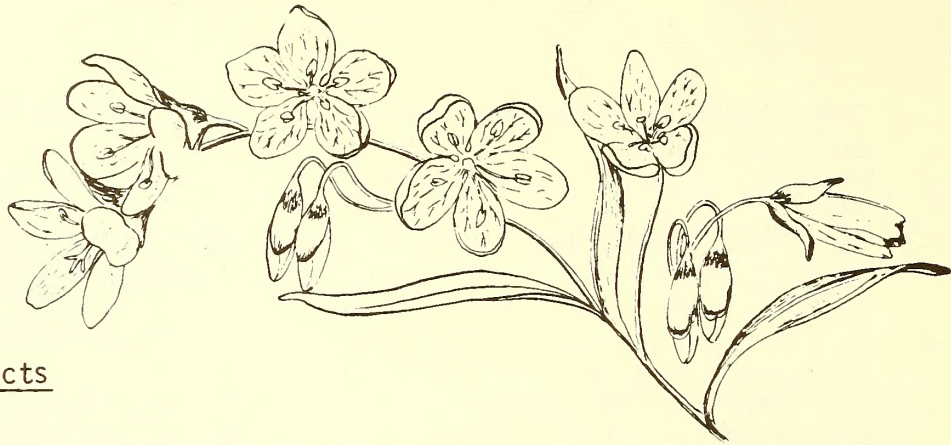
An organizing foundation is wise to emphasize the economic benefits of conservation. One newly-formed conservation foundation explained its goals in a mailing, entitled "How the Redding Land Trust, Inc., Can Help You Protect Your Home and Town Investment":

... To conserve natural resources with pockets of open land so that the Redding of the future will retain as much as possible of its attractive character. Open land accomplishes two desirable purposes: First, it helps to preserve the rural aspect of our town. Second, and at the same time, open land contributes to orderly and attractive town growth. The Redding Land Trust was organized to help the landholder and the taxpayer accomplish desirable open space practices, many of which become available and practical for the first time. The Redding Land Trust makes it possible for you to serve the finest goals of conservation through tax-deductible gifts of either land or money.

Some people think that giving land for conservation results in added tax burden for the rest of the town. Actually the opposite is true.

Redding faces problems of spectacular growth and the question of conservation takes on new urgency. Experience has shown that land set aside as permanent open space has a restraining influence on your future tax rate. This is because the new homes which might have replaced the open space would tend to be an added tax expense--needing more in town services than they pay in town taxes.

The mailing served its purpose very effectively and generated both inquiries and land from prospective donors.



VI. Projects

The array of possible conservation projects is tremendous. Your foundation needs an acquisition plan. Not all land available through sale or donation should be accepted. The foundation must consider purchase cost and future operating expenses. Some parcels may be better suited for development and the consequent benefits for the community. Your acquisition strategy must be designed upon your basic conservation goals.

Among the questions your organization must resolve for each acquisition opportunity are:

- Is it "desirable" land for purposes of your foundation, or would you be accepting it simply to please the donor?
- Can your foundation obtain real estate tax exemption and, if not, what are the current taxes?
- Will the donor, or someone else, provide an endowment or management fund to assure to cost of upkeep?
- If no endowment or management fund is available, can your foundation, with its own funds and/or volunteers, assure the proper upkeep?

If you decide to accept the property, it is virtually essential to have the services of an attorney. To enumerate a few possible issues:

- Will you have clean title to the land?
Are the boundaries properly defined?
You may find yourself involved in costly boundary disputes if not careful.
- Does the donor owe back real estate taxes?
Remember, even if you obtain real estate tax exemption, you, as the new owner, are responsible for all back taxes.
- Is there a mortgage on the property?
You, as the new owner, are responsible for payment.
- Make sure you are familiar with all right-of-way and other easements that may burden the property.
- Even though the donor may want the property preserved in perpetuity, the deed or instrument of donation should contain an "escape clause" for, in later years, there may be some reason why your organization can or should no longer retain the land.
- The deed may contain a reverter provision in favor of another conservation organization, but such provision is not binding on that organization unless specifically accepted.

Those foundations primarily concerned with the protection of locally significant natural areas and wildlife habitats will receive assistance from the North Carolina Natural Heritage Program. That agency can inform your foundation about the most unique natural areas, rare species habitats and other outstanding natural resources in your vicinity.

Many landowners will prefer to donate conservation easements over their properties, rather than to give or sell the full interest in their land. A conservation easement is a legal agreement between the landowner and a government agency or a non-profit, conservation organization which restricts the development of the land. Exact terms of an easement are set by the parties to the agreement. More information about conservation easements is contained in the handbook, "Conservation Easements: To Preserve North Carolina's Heritage," available from the North Carolina Botanical Garden, or the North Carolina Nature Conservancy. Your effort will probably be directed toward attracting gifts of land or easements, and only purchasing land when donation is not possible. A detailed explanation of the tax benefits to a donor of land is available from the Natural Heritage Program. Acquisitions should be made according to your master plan developed to attain your conservation goals and to meet the needs of the public your organization serves.

Following are some case examples of how your conservation foundation can protect your community's natural heritage:

1. Preservation of Land Loved by Donor

Problem: Twelve acres are owned by Mr. and Mrs. M. About four acres are cleared, with house and buildings to suit the resident owners. The entire property is assessed at over \$30,000--of which about \$6,000 is undeveloped natural land. With retirement less than 10 years away, they are planning for the future. They would like to preserve the natural beauty and wildlife of the property they love for the long-term benefit of the county.

Solution: The owners separate house and lot from the undeveloped land and deed the natural land to your conservation foundation as a wildlife preserve. A stipulation gives Mr. and Mrs. M sole use of the deeded land as long as they live.

The gift is made in such a way that their income tax is reduced by over \$1,000 every year until retirement. Property taxes are lowered in proportion to the land gift. In addition, no estate or inheritance taxes can be levied on the donated land. Also the value of their home will always be enhanced by the open spaces around it which they can enjoy.

2. Preservation of Land Unloved by Donor

Problem: Industry X bought a 400 acre mountain on the assumption that it could be quarried for stone. The rock, however, has proven not to meet building standards. The industry offers to sell its property for \$300 per acre, or \$120,000 total. In 9 months on the market, no one has expressed serious interest in purchase.

Solution: Your conservation foundation demonstrates to the industrial owner that the tax benefits of a donation will offset its property sale and capital gains taxes. The industry donates the mountain to your foundation as a research natural area and environmental education center. The industry gains tax benefits by its charitable donation and improves its public image.

3. Cooperative Action Guards Value

Problem: A stream meanders through wetlands owned in part by four different families. Each wants to preserve the wild area and agrees not to do anything which would hurt or mar it. But each family wonders what would happen if one of the pieces of land would change hands. A new owner might use this back land as a private refuse area or even interfere with the natural flow of water. There are dozens of ways this wild area could be spoiled so that plants and wildlife would disappear.

Solution: The four owners get together and agree to deed the stream corridor to your conservation foundation for the benefit of all. This way they can guarantee that the natural stream will remain to support the value of the entire area. At the same time, each family gets a welcome deduction from current incomes taxes, taking full advantage of the appreciated value of the donated land.

4. A Tool for Better Land Development

Problem: Mr. G Bought a 400-acre wooded tract for investment. Some was high land, ideally suited for attractive homes. About 90 acres were low and poorly drained, but habitat for a diversity of wild-flowers. Reclaiming the low acres would be expensive and result in scarring the entire tract with an area of raw, unattractive fill. An alternative would be to pass the problem along to prospective purchasers --thus reducing the appeal of the plots affected.

Solution: By establishing the 90 acres as an open space and deeding it to your conservation foundation as a nature preserve, the owner can improve the saleability of his remaining 310 acres, and get the maximum cash benefit on his income tax by extending his gift over several years. He is able to make resulting tax deductions coincide with annual income from the sale of building sites.

The community gains a more attractive group of new homes with permanent open space nearby. The investor is spared the expense of filling or draining land for building purposes and makes a fair return on his investment.

5. Land--the Living Memorial

Problem: Mr. and Mrs. T lived in the county for many years on a large tract of land. Both husband and wife spent many hours enjoying their land and maintaining it as an informal nature sanctuary. When Mr. T died, his widow decided to sell the house and improved portion of the land and move to Arizona to be near her children who had settled in the Southwest. But she kept the sanctuary intact.

Mrs. T. would like to guarantee that the land will be kept as it is to encourage continuation of the wildlife she and her husband cherished. But now that she lives far away, she cannot care for the property, nor can she afford to arrange for professional management of her land. In fact, the rising cost of living has affected Mrs. T's income and she has been advised to sell the land. How can she attain her goal?

Solution: The conservation foundation makes it possible and practical to continue the preserve's existence and at the same time perpetuate her husband's memory in an appropriate manner. By giving the land to your conservation foundation for permanent protection, the very land which had become a source of income. Mrs. T's tax situation makes it possible for her to take full advantage of the appreciated value of the land and save nearly \$2,000 a year in income taxes.

The high valuation of the land could have made estate and inheritance tax problems for her children. Instead, as a nature sanctuary, the land becomes a permanent living memorial to Mr. T, and in a sense is a gift to the community from a family who had appreciated and worked to maintain its rural atmosphere.



Once your foundation has acquired property or easements, decisions regarding the proper use of each property must be made. Of course, the natural values of principal importance will shape the ways that natural lands may be used ... without being damaged. Some tracts may lend themselves to the development of nature study areas, for which programs can be designed. Local schools are often eager to develop field study programs on appropriate natural sites. Certain lands may require a strict preservationist policy, due to valuable ecological, wildlife or geological resources, or because the land serves as buffer open space areas in otherwise heavily developed localities.

Some conservation foundations work with land developers, encouraging the developers to set aside some portions of their subdivisions as conservation zones ("green belts") or recreational areas. The foundation may also educate community officials and the general public to the importance of conserving some lands as community open space and recreational areas. Other land use planning goals sought by conservation foundations may include: local adoption of flood plain controls, wetlands conservation standards, subdivision regulations, modern zoning ordinances based on performance standards and cluster development, creation of historic conservancy districts, tax assessment of land on its present use (rather than on its potential for development, which can result in tax rates so high as to force the owner to sell to developers), and comprehensive community and regional planning.

Conservation foundations will become involved in management of the forests and other plants and animals on the properties they control. Some many even educate the general public to practice good management techniques on their own private properties.

Conservation foundations can be crucial contributors to the protection of North Carolina's natural heritage. Government should not be solely responsible for natural resources conservation. Statewide and national organizations alone cannot safeguard all the natural lands important to the interests of North Carolinians. Local initiatives are necessary to provide "grass roots" support for conservation. North Carolinians must now be prepared to plan, and indeed to pay, to maintain their natural heritage. Conservation foundations in other States have proven their capabilities. Conservation foundations are an important means by which North Carolinians can protect the natural environment they love.

APPENDICES

- (A) Agencies Capable of Providing Technical Assistance to a Conservation Foundation
- (B) Suggested Agenda for Foundation's First Organizational Meetings
- (C) Example Articles of Agreement (Incorporation)
- (D) Example By-Laws

Appendix A

Agencies Capable of Providing Technical Assistance to a Conservation Foundation

North Carolina Department of Natural Resources and Community
Development
Post Office Box 27687, Raleigh, North Carolina 27611

Division of Parks and Recreation

- Natural Heritage Program
- Natural and Scenic Rivers Programs
- State Trails Program
- Recreation Consulting Services

Division of Forest Resources

- District State Foresters

Division of Soil and Water Resources

- Soil and Water Conservation Districts

Wildlife Resources Commission

- District Wildlife Biologists

Heritage Conservation and Recreation Service, Southeast Regional
Office
75 Spring Street, S.W., Atlanta, Georgia 30303

North Carolina Extension Service

- Cooperative Forestry Program
North Carolina State University
Raleigh, North Carolina 27607

Soil Conservation Service

-- County Agents and Conservationists

Tennessee Valley Authority

-- Division of Natural Resources Services
Regional Heritage Program
Norris, Tennessee 37828

North Carolina Botanical Garden
100 Totten Center
Laurel Hill Road
Chapel Hill, North Carolina 27514

North Carolina Nature Conservancy
Post Office Box 805
Chapel Hill, North Carolina 27514

North Carolina Wildlife Federation
Post Office Box 10626
Raleigh, North Carolina

National Audubon Society and Local Chapters
Southeast Regional Office
Post Office Box 1268
Charleston, South Carolina 29402

Appendix B

Suggested Agenda for the Foundation's Organizational Meetings

The agenda for the meeting can run approximately as follows:

1. Presentation of the idea and explanation of land conservation foundation. The statement of purposes and objectives should be read, commented upon and revised if necessary.

Officers of foundations in operation will often be willing to speak about their experiences at your organizational meetings, and can provide valuable encouragement and how-to-do-it suggestions based upon firsthand experience.
2. Following thorough discussion (which may well prove lengthy), the moderator should ask for a showing of hands of those interested in continuing with the project. If the decision is "go," a temporary organizational chairperson should be elected. The chairperson will oversee the project until the corporation has become chartered, by-laws drawn up, and officers and board of directors elected.
3. A small committee of volunteers (perhaps four members) should be asked to work with the lawyer. This "charter committee" can study the model Articles of Agreement and, with the lawyer's assistance, tailor the model into a specific charter for your trust (this can be accomplished in an evening's work).
4. A next meeting date should be set, preferably within two weeks so that momentum is not lost. Participants should be urged to invite others, in addition to themselves, to attend the next meeting.
5. Adjourn.

The agenda suggested for the second organization meeting is:

1. For the benefit of any newcomers, present a brief re-cap of what a land trust is and why one is desired.
2. Charter committee distributes copies of its recommended charter (Articles of Agreement) for discussion and revision. If the articles are accepted by the group as written, they are signed by five or more persons in attendance. If revisions are called for, the lawyer can retype the charter during the following few days and circulate it for appropriate signatures.

(The lawyer will then have the document recorded with the clerk of the county or town listed as the place of business of the corporation. He then takes the document to the office of the North Carolina Secretary of State. Before the Articles of Agreement are accepted there, the files are checked to make sure that no other corporation has filed the same name. Upon payment of a \$20 fee,

the Articles of Agreement are recorded and your corporate charter is established... effective that same day. The Articles of Agreement will be held at the office of the Secretary of State for processing, which takes from two to seven days, then the original will be returned to your lawyer or anyone else designated.)

3. A "by-laws committee" should be appointed by the temporary chairman to work with the lawyer (perhaps the former "charter committee" will be willing to now serve as the "by-laws committee"). The "by-laws committee" is asked to refine the model by-laws and present its version at the next meeting.
4. A "nominating committee" is chosen and assigned the duty of nominating a slate of directors and officers, which will be brought to a vote at the next meeting.
5. Adjourn.

The third and final organizational meeting should take place after word has been received from the lawyer that the charter has been formally recorded. Suggested agenda is:

1. Announcement of formal incorporation.
2. Presentation of the suggested by-laws; discussion, revision, vote to adopt the by-laws.
3. The land having been incorporated and its by-laws having been adopted, all that remains is the election of a board of directors and a slate of officers. The nominating committee presents its suggestions which are voted upon.
4. Appointment of a publicity committee to announce the formation of your foundation and explain its interests and purposes.
5. Adjourn.

Appendix C

THE STATE OF NORTH CAROLINA

ARTICLES OF AGREEMENT INCORPORATION

The undersigned, being persons of lawful age, associate under the provisions of the Laws of North Carolina by the following:

ARTICLES OF AGREEMENT

Article 1. The name of this corporation shall be the _____ Incorporated.

Article 2. To object for which this corporation is established is:

- a. To promote for the benefit of the inhabitants of the (counties or towns) in and adjacent to the (geological area)
(1) the conservation of the natural resources, to include the conservation of the natural resources of the land, water, marshland, woodland and open spaces, and the plant and animal life therein, (2) the maintenance of the unique scenic and historic sites, and (3) the protection of the waters of the _____ River and its tributaries against pollution;
- b. To acquire, by gifts, purchase or otherwise, real or personal property of all kinds, and the rights to property including easements, and to use such property and rights in such a manner as the Board of Directors shall deem appropriate to carry out the purposes set forth herein and subject to the limitations set forth herein;
- c. To use all property held or controlled by the corporation and the net earnings thereof within the United States of America for the benefit of the inhabitants of the counties or towns in and adjacent to the geological area, and exclusively for the charitable and conservationist purposes set forth herein;
- d. To exercise its powers through its officers, directors, members, employees and agents and to join with other organizations in activities designed to achieve the objectives of the corporation;
- e. In general, and subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes herein set forth, or necessary or incidental to the powers so conferred, conducive to the attainment of the purposes of the Corporation, subject to the furtherance of the tax-exempt purposes of the corporation and as may be exercised by an organization exempt under Section 501(c) (3) of the Internal Revenue Code and its Regulations, as they now exist or may hereafter be amended, and by an organization, contributions to which are deductible under Section 170(c) (2) of such Code and Regulations, as they now exist or may hereafter be amended.

Article 3. The place in which the business of this corporation is to be carried on is North Carolina.

Article 4. The amount of capital stock or number of shares is none.

Article 5. No part of the earnings of the corporation shall inure to the benefit of any member, director, or officer of the corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes) and no member, director, officer of the corporation, or any private individual shall be entitled to share in the distributions of any of the corporate assets on dissolution of the corporation. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in, any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this certificate, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c) (3) of the Internal Revenue Code and its Regulations, as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under Section 170 (c) (2) of such Code and Regulations, as they now exist or may hereafter be amended.

Article 6. This corporation shall have perpetual existence; but in the event of the dissolution of the corporation or the termination of its corporate existence, all its net assets located within the State of North Carolina shall be transferred, paid over, and delivered exclusively to or for the benefit of the (counties or towns) in and adjacent to the (geological area) or one or more scientific, charitable or educational organizations such as the _____ to be used and dedicated as nearly as practicable in accordance with the purposes of this corporation as set forth herein, provided that no such asset shall be distributed other than to or for the benefit of organizations qualifying at the time of such distributions under the provisions of Section 501(c) (3) of the Internal Revenue Code and its Regulations as they now exist or may hereafter be amended.

Article 7. These Articles of Agreement may not be amended to prevent the corporation from qualifying as exempt organization under Section 501(c) (3) of the Internal Revenue Code, as it now exists or may hereafter be amended.

NAME (At least five signatures are required)

POST OFFICE ADDRESS

Received and recorded this . . . day of , 19_____

Appendix D

BY-LAWS

The rules under which your corporation will be run. In this document, your corporation establishes the guidelines under which it will operate.

The model by-laws which follow are written in accordance with the successful experiences of existing watershed associations and land trusts. If your group finds compelling reason to change such items as the classes of membership, number of officers or directors, length of terms, number of persons constituting a quorum, etc., certainly feel free to do so.

Many, even all, of the statements made in the by-laws could have been included in the Articles of Agreement. However, it is generally considered unwise to do so, simply because by-laws are much easier to amend or otherwise alter.

B Y - L A W S

of the CONSERVATION FOUNDATION, Incorporated

ARTICLE I: MEMBERSHIP

Section 1. Classes of Membership

- a. Student -- A person under 18 years of age and not yet out of high school is eligible for student membership. He is entitled to all rights and privileges of the Association with the exception that he is not entitled to vote or hold elective office.
- b. Regular -- Any person being at least 18 years of age is eligible for active membership with full privileges and responsibilities thereof.
- c. Family -- Any family including at least one person 18 years of age and children under 18 years of age is eligible for family membership with full privileges and responsibilities thereof except as herein mentioned. Each family is allowed one vote, and only one member thereof may hold office.
- d. Organization -- Any club or organization interested in supporting and participating in the activities of the Association is eligible for membership. Each organization is allowed one vote and only one member thereof may hold office.
- e. Life -- Any person being at least 18 years of age is eligible for active membership with full privileges and responsibilities thereof.

Section 2. The membership year runs from _____ through _____.
Dues must be paid by _____.

Section 3. New Members. All interested persons and groups may become members upon payment of dues and approval of application for membership by the Board of Directors.

Section 4. Dues. The Board of Directors may by resolution establish rates of annual dues for the various classes of membership.

Section 5. Suspension. The Board of Directors, by affirmative vote of two-thirds of all members of the Board, may suspend a member for cause. Any member may resign by filing a written resignation with the Secretary.

ARTICLE II. OFFICERS

Section 1. The officers of this Association shall be President, Vice President Secretary and Treasurer.

- a. President -- The President shall be the principal executive officer of the Association and shall, in general, supervise and control all the business and affairs of the Association. He shall preside at all meetings of the Members and of the Board of Directors. He may sign, with the Secretary or any other proper officer of the corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws or by statute to some officer or agent of the Association; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.
- b. Vice President -- In the absence of the President or in the event of his inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.
- c. Secretary -- The Secretary shall keep the minutes of the meetings of the members and of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of the By-Laws or as required by law; be custodian of the

corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these By-Laws; keep a register of the post office address of each member and contributor which shall be furnished to the Secretary by such member and contributor; shall serve as Clerk of the corporation; and, in general, perform all duties as from time to time may be assigned to him by the President or the Board of Directors.

- d. Treasurer -- If required by the Board of Directors, the Treasurer shall give bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine. He shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies, or other depositories as shall be selected in accordance with these By-Laws; and in general perform all the duties incident to the office of Treasurer and such others as from time to time may be assigned to him by the President or Board of Directors, The fiscal year shall run from _____ through _____.

Section 2. Election. At the first annual meeting of the members, the President and Secretary shall be elected to one-year terms and the Vice President and Treasurer shall be elected to two-year terms. Thereafter, at the annual meetings of the members, officers shall be elected as their terms expire, to serve each for terms of two years. Each officer so elected shall hold office until his successor shall have been elected and qualified.

Section 3. No officer shall be eligible to more than two consecutive terms in the same office.

ARTICLE III: MEETINGS

Section 1. Annual Meeting

- a. The annual meeting of the members shall be held during the month of _____.
- b. All members are eligible to take part in the annual meeting at the time and place selected by the Board of Directors.
- c. Written notice stating the time and place of the annual meeting or any special meeting shall be sent to all members at least seven days prior to such meeting.

Section 2. Voting

- a. Each voting member shall be entitled to one vote on each matter submitted to vote of the members.
- b. Voting by proxy may be permitted under such conditions as prescribed by the Board of Directors.

Section 3. Special Meetings. Special meetings of the members may be called by the President, or shall be called by him upon written request of either the Board of Directors or any fifteen members.

Section 4. Quorum. Any fifteen members of the Association shall constitute a quorum.

ARTICLE IV: BOARD OF DIRECTORS

Section 1. The property, business and affairs of the Association shall be managed by a Board of Directors consisting of at least nine members, including the President, Vice President, Treasurer and Secretary, who shall, upon election and qualification, automatically be members of the Board of Directors.

Section 2. Election

- a. Only members of the Association shall be eligible for election to the Board of Directors.
- b. At the first annual meeting of the members, two of the Directors shall be elected for one-year terms and the remainder shall be elected for two-year terms. Each Director shall hold office until the annual meeting of the members occurring at the expiration of his term and until his successor shall have been elected and qualified.

Section 3. Meetings

- a. An annual meeting of the Board of Directors shall be held immediately after, and at the same place, as the annual meeting of the members. The Board of Directors may select the time and place for the holding of regular meetings of the Board.
- b. Special meetings of the Board of Directors may be called by or at the request of the President or any four Directors by giving notice of the date, time, place and purpose of the meeting to all Directors at least two days in advance of such meeting.

Section 4. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board.

Section 5. Vacancy. Any vacancy occurring in the Board of Directors and its officers shall be filled by the Board. A Director or officer elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

ARTICLE V. COMMITTEES

Section 1. The President shall have the power to appoint such committees as he deems necessary to conduct properly the business of the Association, except as herein provided.

Section 2. The President shall be exofficio a member of all committees except the nominating committee.

Section 3. The nominating committee shall be a standing committee (elected by the members or appointed by the Board of Directors).

ARTICLE VI. PARLIAMENTARY AUTHORITY

The rules contained in Robert's Rules of Order, Revised Edition shall govern the Association in all cases to which they are applicable, and in which they are not inconsistent with the By-Laws.

ARTICLE VII. AMENDMENT

These By-Laws may be altered, amended or repealed by a two-thirds vote of the members present at an annual meeting, or at any special meeting, if at least fourteen days written notice is given stating in detail such intention to alter, amend or repeal or to adopt new By-Laws at such meeting.

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